

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Commercial Division)

No. : 500-11-053313-173

IN THE MATTER OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED:

JAVA-U GROUP INC.

- and -

JAVA-U FOOD SERVICES INC.

- and -

CAFÉ JAVA-U INC.

- and -

JAVA-U RTA INC.

Applicants/Debtors

- and -

RAYMOND CHABOT INC.

Monitor

APPLICATION FOR THE ISSUANCE OF AN ORDER CALLING A MEETING OF  
CREDITORS TO VOTE ON A PLAN OF ARRANGEMENT AND COMPROMISE,  
AMENDING THE INITIAL ORDER SO AS TO INCREASE THE DIP CHARGE, AND  
EXTENDING THE STAY OF PROCEEDINGS

(Section 11 of the *Companies' Creditors Arrangement Act*)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL,  
THE APPLICANTS RESPECTFULLY SUBMIT THE FOLLOWING:

1. **INTRODUCTION**

1. On October 6, 2017, this Court rendered the following orders pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of Java-U Group Inc. ("**Java-U Group**"), Java-U Food Services Inc. ("**Java-U Food**"), Café Java-U Inc. ("**Café Java-U**") and Java-U RTA Inc. ("**Java-U RTA**", together with Java-U Group, Java-U Food and Café Java-U, the "**Company**"), as appears from the Court record:

- (a) an initial order (the "**Initial Order**") approving, *inter alia*:
    - (i) a stay of all proceedings against the Company until November 6, 2017 (the "**Stay Period**");
    - (ii) the appointment of Raymond Chabot Inc., as monitor to the Company (the "**Monitor**");
    - (iii) the terms and conditions of an interim financing (the "**DIP Financing**") offered by 3070352 Canada Inc. to the Company, as part of these proceedings initiated under the CCAA (the "**CCAA Proceedings**"); and
    - (iv) a solicitation process to be conducted in respect of the Company's assets (the "**Solicitation Process**");
  - (b) a claims procedure order (the "**Claims Procedure Order**") providing for, *inter alia*, the procedure for the filing, review, determination and adjudication, if necessary, of all claims against the Company (the "**Claims Process**").
2. On November 6, 2017, this Court rendered another order in the context of the CCAA Proceedings extending the Stay Period until December 22, 2017, and amending the Initial Order so to authorize the Company to increase the amount which it can borrow from 3070352 Canada Inc., from time to time, as part of the DIP Financing.
  3. On December 21, 2017 and February 23 2018, this Court issued orders extending the Stay Period (now until March 15, 2018) in order to allow the Monitor and the Company, respectively, to finalize the review and determination of the claims filed against the Company in the context of the Claims Process, and, in parallel, finalize a plan of arrangement a compromise.
  4. At the February 23, 2018 hearing, although the present Application had not yet been filed, this Court reserved however the March 15, 2018 date to allow the Company to present an Application for the calling of a meeting of creditors to vote on a plan of arrangement and compromise.
  5. For the reasons further described below, the Company hereby seeks from this Court the issuance of an order, *inter alia*:
    - (a) authorizing the Company to convene, hold and conduct a meeting of its creditors (the "**Creditors Meeting**") to vote on plan of arrangement and compromise (the "**Plan**");
    - (b) amending the Initial Order so as to authorize the Company to increase the amount which it can borrow from 3070352 Canada Inc., from time to time, by an additional amount of \$300,000, and to increase the DIP charge already approved by this Court in the Initial Order accordingly; and

(c) extending the Stay Period until May 2, 2018;

in accordance with the terms set forth in the draft Order, communicated herewith as **Exhibit R-1**.

## **2. THE COMPANY'S RESTRUCTURING EFFORTS**

### **2.1. The Solicitation Process**

6. Pursuant to the Initial Order, the Company was authorized by this Court to conduct a solicitation process (the "**Solicitation Process**") in order to secure one or several offer(s) to either finance the operations of the Company going forward or purchase its assets, as a going concern, substantially in accordance with the process further described in the Company's *Application for the Issuance of an Initial Order and a Claims Procedure Order* dated October 4, 2017.
7. By October 13, 2017, the Monitor, with the assistance of the Company, prepared a list of approximately forty-eight (48) prospective investors and/or purchasers across Canada, each of which were identified and selected for their involvement in the coffee market, and/or their experience as franchisors in the catering business.
8. On October 20, 2017, after having established a virtual data room (the "**Dataroom**") allowing all potentially interested parties willing to sign a non-disclosure agreement (each an "**NDA**") to have access to the Company's business and financial documents, the Monitor officially launched the Solicitation Process, and sent to all Prospective Investors and Purchasers a copy of the "*teaser*" (the "**Teaser**"). The Teaser was also posted on the Monitor's website, and transmitted by email, on October 23, 2017, to 3,894 potential interested parties, all of whom were found on Raymond Chabot Inc.'s standard list of potential purchasers (together with the forty-eight (48) prospective investors and/or purchasers identified by the Company and the Monitor, the "**Prospective Investors and Purchasers**").
9. Pursuant to the Teaser, all Prospective Investor or Purchaser were invited to submit an offer in respect of the financing of the operations of the Company or the purchase of its assets by no later than December 1, 2017, at 10:00AM (the "**Bid Deadline**").
10. In addition to the Prospective Investors and Purchasers to whom the Monitor initially sent the Teaser, eight (8) additional interested parties also communicated directly with the Monitor to obtain a copy of the Teaser, as well as additional information regarding the Company's business and assets.
11. In total, fifteen (15) Prospective Investors and Purchasers signed an NDA and gained access to the Dataroom, with each of whom the Company and/or the Monitor followed up with to inquire about their potential interest in the Company or its assets.

12. At the Bid Deadline, despite the initial indications of interest made in respect of the Company or its assets, only one offer was submitted to the Monitor<sup>1</sup>, being an offer by 3070352 Canada Inc., Bryan Cytrynbaum and Allan Cytrynbaum (the "**Sponsors**") to sponsor a plan of arrangement and compromise in respect of the Company, which would allow it to continue its operations as a going concern while providing certain recoveries to its creditors (the "**Sponsors' Offer**").
13. No other offer was submitted to the Company in the context of the Solicitation Process, except two (2) other offers which were submitted after the Bid Deadline.
14. Despite having received such offers after the Bid Deadline, the Monitor, together with the Company, reviewed these offers, but nonetheless came to the conclusion that the Sponsors' Offer remained, under the circumstances, the best offer to the Company's creditors and stakeholders.
15. The terms and conditions of the Sponsors' Offer are reflected in the Plan which is further described in Section 3 hereof.

## **2.2. The Claims Process**

16. Pursuant to the Claims Procedure Order rendered by this Court on October 6, 2017, a procedure was established for the purpose of identifying, establishing and adjudicating all claims of any person against the Company, and their directors and officers, as appears from the Court record.
17. On October 6 and 13, 2017, respectively, the Monitor published, on its website, the Claims Procedure Order, as well as the notices, instructions and forms relating to the Claims Procedure Order, in addition to sending these to all known creditors, to advised them of the CCAA Proceedings and that this Court had established a claims bar date of November 15, 2017 (the "**Claims Bar Date**").
18. On October 14, 2017, the Monitor published in The Globe and Mail the notices relating to the Initial Order and the Claims Procedure Order.
19. As at the Claims Bar Date, a total of eighty-three (83) persons or entities filed a claim with the Monitor, all of which amount to more than \$17,000,000.

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<sup>1</sup> On December 1, 2017 at 7:30PM, the Monitor received a second offer to purchase a portion of the Company's assets. In addition to being invalid on the basis that such offer was submitted after the Bid Deadline, this offer provided a consideration which was substantially less than what was offered in the Sponsors' Offer.

20. These claims include, *inter alia*:
- (a) the claims of the Sponsors against the Company, which, in the aggregate, exceed \$9,000,000;
  - (b) certain claims against the Company which, in the aggregate, exceed \$3,200,000<sup>2</sup>, and which, prior to the initiation of the CCAA Proceedings, were the subject of contestation by the Company before the Superior Court of Quebec;
  - (c) a claim against the Company in the amount of more than \$1,200,000 for the lawful termination of a lease agreement following the issuance of the Initial Order; and
  - (d) a claim against the Company and its directors in an amount of \$2,500,000 by one of its shareholders, 126217 Canada Inc. for the reimbursement of its equity investment (the "**Shareholders' Claim**").
21. The Monitor, in consultation with its legal counsels and the Company, reviewed each of these claims, in order to assess the validity and quantum thereof.
22. As at the date of this Application, the Monitor has taken a final position with respect to the above-mentioned claims, and has or is in the process of advising the holders of such claims of said position.

### **2.3. The Plan**

23. Based on the Sponsors' Offer and the Monitor's determination of the claims filed against the Company in the context of the Claims Process, the Company prepared a plan of arrangement and compromise (i.e. the Plan) which incorporates the terms and conditions of the Sponsors' Offer. A copy of the Plan is communicated herewith as **Exhibit R-2**.
24. Pursuant to the Plan (and the Sponsors' Offer), it is proposed that in exchange for the release of all claims against the Company and the Sponsors, including the Shareholders' Claim, the issuance of a number of common shares of Java-U Group, representing 100% of the equity of the recapitalized Java-U Group, the Sponsors shall make the following contribution for the benefit of the Company's creditors and other stakeholders:
- (a) Debt Forgiveness: Each of the Sponsors will release their respective claims against the Company, up to the following amount:
    - (i) 3070352 Canada Inc.: \$6,137,758.02;
    - (ii) Brian Cytrynbaum: \$853,025.00;
    - (iii) Allan Cytrynbaum: \$170,000.00;

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<sup>2</sup> One of these claims has been filed twice.



- (b) Waiver of Plan Distribution: Each of the Sponsors shall postpone the balance of their respective claims, including, for 3070352 Canada Inc., its claim against the Company with respect to the DIP Facility, and shall waive their right to any of the Sponsors' Cash Contribution (as defined below) or any Litigation Proceeds (as defined below) to be distributed to the Company's creditors as part of the Plan;
  - (c) Cash Contribution: The Sponsors will also contribute an additional \$50,000 in cash (the "**Sponsors' Cash Contribution**") to be remitted to the Monitor and distributed to the Company's creditors as part of the Plan.
  - (d) Exit Financing: The Sponsors will also fund the recapitalized Debtors' ongoing operations by providing them with exit financing in the form of a line of credit, for a period of at least twelve (12) months following the Plan Implementation Date, up to an amount of at least \$500,000, bearing interest at a rate of 7.5% and secured by a first ranking hypothec over the universality of the Debtors' assets (the "**Exit Financing**"). The Exit Financing shall be used fund the Company's ongoing operations, and to finance the reasonable fees and expenses to be incurred in connection with the pursuit by the Company of any and all claims or causes of actions which it may have against third parties (collectively, the "**Litigation Claims**"). Fifty percent (50%) of all net proceeds collected before December 31, 2018 (after payment or reimbursement of reasonable fees and expenses incurred or to be incurred) resulting from the adjudication or settlement of these Litigation Claims (the "**Litigation Proceeds**") shall also be remitted to the Monitor and distributed to the Company's creditors as part of the Plan.
25. As will be further explained in the report of the Monitor which will be filed at Court prior to the hearing on this Application, the transaction contemplated in the Plan will provide, under the circumstances, the best outcome and recovery for the Company's creditors.

### 3. ORDERS SOUGHT

#### 3.1. The creditors' meeting

26. Given the filing of the Plan, the Company hereby requests from this Court that it be authorized to convene, hold and conduct a meeting of the Affected Creditors (as defined in the Plan) on April 25, 2018, in Montreal, Quebec (the "**Creditors' Meeting**"), to consider, and, if thought advisable, adopt a resolution approving the Plan, with or without variation.
27. The Company requests that the Monitor and itself be authorized to proceed with all steps set out in the Order (R-1), including the issuance and publication of all meeting materials attached to said order (collectively, the "**Meeting Materials**").

**3.2. Increase of the DIP Facility**

28. Since the beginning of these proceedings, despite the Company's efforts to reduce its expenses as much as possible, its revenues have remained limited such that its liquidities have remained insufficient to fund its operations.
29. Throughout these proceedings, various adjustments were required to be made to the Company's cash-flow forecast as a result of lower projected sales and corrections to some of its assumptions.
30. To date, the Company has drawn a significant portion of the moneys made available to it under the DIP Financing approved by this Court to finance its on-going operations, such that it now requires an additional increase of the amounts which it is allowed under such DIP Financing so as to maintain its operations until its creditors can vote on its Plan and then presented to this Court for approval, assuming a favorable vote in respect thereof.
31. The Company, in consultation with the Monitor, has prepared a cash-flow forecast reflecting its needs for liquidities between now and the end of June, 2018.
32. The Company's interim lender, 3070352 Canada Inc., has advised it that it is agreeable to increase the DIP Financing by an amount of \$300,000, provided that this Court approves of same, and also approves of the increase on the DIP Charge accordingly. As Plan Sponsor, 3070352 Canada Inc. has also indicated that if the Plan is approved by the Company's creditors and this Court, the totality of the amounts owed in connection with the DIP Financing (including any additional amounts which may be owed should this Court approve the requested increase on the DIP Financing) shall be postponed.
33. The Company respectfully submits that no creditor will be materially prejudiced by the increase sought in connection with the DIP Financing, and further submits that given its very limited liquidities, it is crucial for this Court to order the scheduling of the Creditors' Meeting without further delay, so as to allow the Company to emerge from these proceedings.
34. Unless such authorization is granted, the Company will not be in a position to continue its operations and eventually implement the Plan, to the detriment of all of its creditors and stakeholders.

**3.3. Extension of the Stay Period**

35. In light of the foregoing, the Company finally requests an extension of the Stay Period until May 2, 2018.

**4. CONCLUSION**

36. Since the issuance of the Initial Order, the Company has acted, and continues to act, in good faith and with due diligence in its efforts to find a solution to ensure the continuity of its operations, and maximize the recovery of its creditors.
37. As such, the Company respectfully submits that it is appropriate for this Court to issue the Order in accordance with the terms and conditions set out in the proposed draft thereof, communicated herewith as Exhibit R-1, as it is in the best interest of the Company and all of its stakeholders that the present Application be granted in accordance with its conclusions.
38. The Company is the view that no creditor will suffer any undue and material prejudice from the reliefs sought herein, which, the Company submits, are appropriate in the circumstances.
39. The Company understands that the Monitor supports this Application, and shall file, in advance of the hearing on same, a report setting forth its observations and recommendations.

**WHEREFORE, MAY THIS COURT:**

**GRANT** the present *Application for the Issuance of an Order Calling a Meeting of Creditors to Vote on a Plan of Arrangement and Compromise Order, Amending the Initial Order so as to Increase the DIP Charge and Extending the Stay of Proceedings* (the "**Application**");

**ISSUE** an order substantially in the form of the draft Order filed as Exhibit R-1 in support of the Application;

**WITHOUT COSTS**, save and except in case of contestation.

**Montreal, March 9, 2018**

*Stikeman Elliott LLP*

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## AFFIDAVIT

I, the undersigned, **LOU VAROUTSOS**, having my principal place of business at 4098 Sainte-Catherine Street West, Suite 400, Montreal, Québec H3Z 1P2,;, solemnly declare the following:

1. I am the President and Chief Executive Officer of Java-U Global;
2. All the facts alleged in the *Application for the Issuance of an Order Calling a Meeting of Creditors to Vote on a Plan of Arrangement and Compromise Order, Amending the Initial Order so as to Increase the DIP Charge and Extending the Stay of Proceedings* are true.

**AND I HAVE SIGNED**



**LOU VAROUTSOS**

**Solemnly declared before me at Montreal,  
on the 9th day of March, 2018**



**Commissioner of Oaths for the Province  
of Quebec**



## NOTICE OF PRESENTATION

TO: the Service List

**TAKE NOTICE** that the *Application for the Issuance of a Meeting Procedure Order* will be presented for adjudication before one of the Honourable Judges of the Superior Court, sitting in practice in and for the District of Montreal, in the Montreal Courthouse, 1 Rue Notre-Dame Est, Montréal, QC H2Y 1B6, on **March 15, 2018**, at a time and in room of the Montreal Courthouse to be determined by the Court, and announced to the Service List.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montreal, March 9, 2018

*Stikeman Elliott LLP*

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